

Rory Saunders - NOAA Federal

From: Rory Saunders - NOAA Federal
Sent: Thursday, May 14, 2015 2:40 PM
To: Kimberly Damon-Randall - NOAA Federal
Cc: Max Tritt; Mark Murray-Brown - NOAA Federal; Christine Vaccaro - NOAA Federal; Dan Kircheis; Julie Crocker - NOAA Federal; Julie Williams - NOAA Federal
Subject: Re: Request for technical assistance

Max and I just had a quick follow up call with Ralph Abele, Eric Nelson (who used to work with Chris Mantzaris when Habitat and Protected Resources were one unit), and Ellen Weitzler. They were seeking some clarification on a number of items in our letter. In particular, they wanted to know more about the dissolved oxygen criteria that Max had dug into. Max was able to provide greater clarity for the 7ppm tolerance that they were curious about. We further re-iterated that this does not cover them under section 7, but I don't think they will be taking us up on our offer to consult any time soon. We thought it was important to re-iterate the freshwater/estuarine split outlined in the Statement of Cooperation with FWS. I sent that to them to make sure they had it.

They did not give clear indication where they are headed with this issue generally with the State of Maine, but it seems to be one they are taking quite seriously.

They were very appreciative of the quick turn around, and said that it was very helpful.

All for now.

RS

On Wed, May 13, 2015 at 4:55 PM, Kimberly Damon-Randall - NOAA Federal <kimberly.damon-randall@noaa.gov> wrote:

Hi. I just wanted to send a note of thanks to all of you that worked so hard to get this letter out on a very short timeframe. I really appreciate your efforts and know that it was difficult to get this done so quickly. Thank you!

Kim

----- Forwarded message -----

From: **Mark Murray-Brown - NOAA Federal** <mark.murray-brown@noaa.gov>

Date: Wed, May 13, 2015 at 4:51 PM

Subject: Re: Request for technical assistance

To: "Abele, Ralph" <abele.ralph@epa.gov>

Cc: "Kimberly.Damon-Randall@noaa.gov" <Kimberly.Damon-Randall@noaa.gov>, "julie.williams@noaa.gov"

<julie.williams@noaa.gov>, "julie.crocker@NOAA.gov" <julie.crocker@noaa.gov>, Christine Vaccaro - NOAA Federal <christine.vaccaro@noaa.gov>, "Williams, Ann"

<Williams.Ann@epa.gov>, "rory.saunders@noaa.gov"

<rory.saunders@noaa.gov>, "dan.kircheis@noaa.gov" <dan.kircheis@noaa.gov>, "Abbas, Kassem"

<Abbas.Kassem@epa.gov>, Max Tritt <max.tritt@noaa.gov>

Ralph - Please see attached technical assistance from us in response to your request.

Thank you. Mark.

On Thu, May 7, 2015 at 4:01 PM, Abele, Ralph <abele.ralph@epa.gov> wrote:

Kimberly Damon-Randall

Assistant Regional Administrator for Protected Resources

Greater Atlantic Regional Fisheries Service

National Marine Fisheries Service

Dear Kim:

EPA is requesting technical assistance from FWS on the existing temperature criteria in the Maine Water Quality Standards. EPA's question deals with Maine's WQS as applied in tribal waters which also lie within designated Critical Habitat for Atlantic salmon.

EPA is finishing its review of Maine's Water Quality Standards as they apply in tribal waters. This will be EPA's third decision letter on the topic and it addresses Maine Water Quality Standards which predate 2003 (when EPA started explicitly excluding tribal waters from its actions on Maine WQS). One of those provisions is Maine DEP Rule Chapter 582 – Temperature Criteria (see text below). Maine submitted this Rule to EPA for review and approval in 1989, and EPA approved it for state waters on 12/20/90. EPA approved Maine's temperature criteria for fresh and tidal water because we believed that the criteria were consistent with its applicable EPA ambient water quality criteria.

Maine's criteria include a temperature maximum and a requirement that discharges not exceed EPA's ambient water quality criteria (1986 "Gold Book") for all indigenous species. Subsequent to our approval, however, the Atlantic salmon was listed as an endangered species and later Critical Habitat was designated for the species, some of which is in waters in Indian lands. We believe that Maine's criteria are still consistent with EPA's criteria. Please advise as to whether the current Maine DEP temperature criteria are protective for the listed salmon and its critical habitat.

We would appreciate hearing from you as soon as possible, hopefully no later than early next week. Please contact me at [\(617\)918-1629](tel:6179181629) if you have any questions.

Thank you,

Ralph Abele

Chief Water Quality Branch

EPA Region 1

Link to EPA's national ambient water quality criteria (1986 Water Quality Criteria, "Gold Book")
http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/upload/2009_01_13_criteria_goldbook.pdf The temperature section begins on Page 273.

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 582: REGULATIONS RELATING TO TEMPERATURE

SUMMARY: These rules provide safeguards for fresh and salt water fauna in lakes and rivers of the state, by establishing instream limits on temperature resulting from thermal discharges.

1. **Freshwater Thermal Discharges.** No discharge of pollutants shall cause the ambient temperature of any freshwater body, as measured outside a mixing zone, to be raised more than 5 degrees Fahrenheit or more than 3 degrees Fahrenheit in the epilimnion (upper mixed layer) of any lake or pond. In no event shall any discharge cause the temperature of any freshwater body to exceed 85 degrees Fahrenheit at a point outside a mixing zone established by the Board, nor shall such discharge cause the temperature of any waters to exceed the U.S. Environmental Protection Agency's national ambient water quality criteria established to protect all species of fish that are indigenous to the receiving waters at any point outside a mixing zone established by the Board. Site specific criteria, generated from a study conducted according to DEP approved methods for indigenous species of fish as defined in 38 M.R.S.A. Sec. 466, may be substituted for national ambient water quality criteria, so long as the site specific criteria are no less protective of species found to be indigenous to those waters, and so long as the public participation requirements of federal and state law, including those found at 40 CFR Part 25, have been met. When the ambient temperature of any body of water naturally exceeds the limits set forth in this section, no thermal discharge may be allowed which alone or in combination with other discharges would raise the ambient temperature of the receiving water more than 0.5 Degrees Fahrenheit above the temperature which would naturally occur outside a mixing zone established by the Board.

2. to 4. Reserved

5. Tidal Water Thermal Discharges. No discharge of pollutants shall cause the monthly mean of the daily maximum ambient temperatures in any tidal body of water, as measured outside the mixing zone, to be raised more than 4 degrees Fahrenheit, nor more than 1.5 degrees Fahrenheit from June 1 to September 1. In no event shall any discharge cause the temperature of any tidal waters to exceed 85 degrees Fahrenheit at any point outside a mixing zone established by the Board.

AUTHORITY: 38 M.R.S.A., Sec. 343-A, 464(5)

EFFECTIVE DATE: November 29, 1973

Amended: February 18, 1989

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

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Mark Murray-Brown
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